

Exhibit 331

(Filed Under Seal)

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3

4 IN RE: NAMENDA DIRECT : CIVIL ACTION NO.
5 PURCHASER ANTITRUST : 1:15-cv-07488-CM (JF)
6 LITIGATION :
7

8 ** HIGHLY CONFIDENTIAL **
9

10 July 18, 2017
11

12 Videotaped 30(b)(6) deposition of
13 Teva Pharmaceuticals, through LAUREN
14 RABINOVIC, taken at the offices of Post &
15 Schell, 1600 JFK Boulevard, Four Penn Center,
16 Philadelphia, Pennsylvania 19103, beginning
17 at 1:05 p.m., before LINDA ROSSI-RIOS, a
18 Federally Approved RPR, CCR and Notary Public.
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22
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1 executed. It looks like this -- it's both the
2 settlement agreement and the license
3 agreement. Yeah, it's executed.
4 Q. Just for the record, this is
5 FRX-AT-000184.
6 Ms. Rabinovic, did you review
7 this document in preparing for your
8 deposition?

9 A. I did.

10 Q. I want to -- did you review any
11 earlier versions of this document?

21 BY MR. ADAM:

[illegible]

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[illegible]

22 BY MR. ADAM:

23 Q. And it's fair to say that how
24 Teva and force continued to litigate through
25 trial in this case, possibly appeal,

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1

Age Group	Percentage
18-24	95%
25-34	90%
35-44	98%
45-54	85%
55-64	92%
65-74	95%
75-84	98%
85+	15%

[illegible]

_____.

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[illegible]

	[REDACTED]
	[REDACTED]
	[REDACTED]

11 (Pages 38 - 41)

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<p style="text-align: right;">Page 42</p> <p>[REDACTED]</p> <p>18 BY MR. ADAM:</p> <p>19 Q. Let's go to Bates ending in 207.</p> <p>20 I'm referring to Sections 4.3 to 4.6. Have</p> <p>21 you reviewed these sections?</p> <p>22 A. Yes.</p> <p>23 Q. And do you understand -- sorry.</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 44</p> <p>1 business perspective, I would -- you</p> <p>2 know, the -- we would want to have</p> <p>3 these provisions in a settlement</p> <p>4 agreement because we're settling the</p> <p>5 case. There were other filers, and so</p> <p>6 we'd want to make sure that we were</p> <p>7 getting as good a deal as anybody else</p> <p>8 was. So my business is going to have a</p> <p>9 really hard time accepting an agreement</p> <p>10 where, oh, yeah, I'm not allowed to go</p> <p>11 to market even though somebody else got</p> <p>12 that right to go to market.</p> <p>13 BY MR. ADAM:</p> <p>14 Q. My question was, that provision</p> <p>15 is in Teva's self interest to include that in</p> <p>16 settlement agreements. Correct?</p> <p>17 A. Yeah. Yes.</p> <p>18 Q. This settlement agreement that</p> <p>19 we're looking at is the result of some back</p> <p>20 and forth negotiations between Forest and</p> <p>21 Teva. Correct?</p> <p>22 A. That's my understanding.</p> <p>23 Q. At no time during those</p> <p>24 settlement negotiations did Teva communicate</p> <p>25 with any other generic defendants in that case</p>
<p style="text-align: right;">Page 43</p> <p>[REDACTED]</p> <p>17 Q. Including these provisions in</p> <p>18 the patent settlement is in Teva's independent</p> <p>19 self interest. Correct?</p> <p>20 MR. LUKENS: Object to the form.</p> <p>21 MS. FREDERICK: Object to form.</p> <p>22 To the extent it calls for any expert</p> <p>23 testimony, but to the extent you can</p> <p>24 answer.</p> <p>25 THE WITNESS: I mean, from a</p>	<p style="text-align: right;">Page 45</p> <p>1 regarding the terms of the Namenda settlement</p> <p>2 agreement that they were entering into with</p> <p>3 Forest. Correct?</p> <p>4 MR. LUKENS: Object to the form.</p> <p>5 THE WITNESS: That is correct.</p> <p>6 MR. ADAM: I have no further</p> <p>7 questions.</p> <p>8 VIDEOGRAPHER: The time is now</p> <p>9 13:46. Off the video record.</p> <p>10 - - -</p> <p>11 (A recess was taken.)</p> <p>12 - - -</p> <p>13 VIDEOGRAPHER: The time on the</p> <p>14 clock is 13:55. We are back on video</p> <p>15 record.</p> <p>16 - - -</p> <p>17 EXAMINATION</p> <p>18 - - -</p> <p>19 BY MR. LUKENS:</p> <p>20 Q. Good afternoon, Ms. Rabinovic.</p> <p>21 My name is Joe Lukens, and I represent the</p> <p>22 Direct Purchaser Class Plaintiffs in this</p> <p>23 case.</p> <p>24 I just want to focus on first,</p> <p>25 to start off, the Teva Exhibit 5, the</p>

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<p style="text-align: right;">Page 46</p> <p>1 Paragraph IV letter. If you have that.</p> <p>2 A. Yes, I have.</p> <p>3 Q. So this is the Paragraph IV</p> <p>4 letter that Teva sent to Forest in connection</p> <p>5 with the '703 patent and the memantine ANDA.</p> <p>6 Is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And in the -- as part of the</p> <p>9 letter Teva laid out its factual and legal</p> <p>10 bases for its position regarding the</p> <p>11 non-infringement position and invalidity</p> <p>12 position that it took with respect to the '703</p> <p>13 patent. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And Teva provided this</p> <p>16 information to Forest after an investigation</p> <p>17 by Teva's counsel. Is that right?</p> <p>18 MS. FREDERICK: Object to the</p> <p>19 extent it calls for any privileged or</p> <p>20 work product information. But you can</p> <p>21 answer to the extent it does not.</p> <p>22 MR. ADAM: Object to form as</p> <p>23 well.</p> <p>24 THE WITNESS: Counsel was</p> <p>25 involved in preparing the legal</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And when Teva sends out a</p> <p>2 Paragraph IV letter, does Teva anticipate that</p> <p>3 it may be get sued by the brand company with</p> <p>4 respect to the patents that are issued within</p> <p>5 the Paragraph IV letter?</p> <p>6 MR. ADAM: Objection. Form.</p> <p>7 THE WITNESS: It may, yeah. It</p> <p>8 doesn't -- I mean, suit is a</p> <p>9 possibility, yes.</p> <p>10 BY MR. LUKENS:</p> <p>11 Q. And after Teva served this</p> <p>12 Paragraph IV letter on Forest, it did get sued</p> <p>13 by Forest. Is that right?</p> <p>14 A. That's my understanding, yes.</p> <p>15 Q. And did Teva learn at some point</p> <p>16 that other ANDA filers had been sued by Forest</p> <p>17 as well?</p> <p>18 A. Yes.</p> <p>19 Q. And did Teva believe, if you</p> <p>20 know, that at the time it submitted this</p> <p>21 Paragraph IV letter and its ANDA, that it</p> <p>22 could be the first filer for the memantine</p> <p>23 product?</p> <p>24 MR. ADAM: Objection. Form.</p> <p>25 MS. FREDERICK: Object to the</p>
<p style="text-align: right;">Page 47</p> <p>1 arguments in support of the letter,</p> <p>2 yes.</p> <p>3 BY MR. LUKENS:</p> <p>4 Q. And so what Teva was doing was</p> <p>5 letting Forest know at least some of the bases</p> <p>6 under which Teva believed that its product did</p> <p>7 not infringe the patent. Is that right?</p> <p>8 MS. FREDERICK: Object to the</p> <p>9 extent it calls for any privileged</p> <p>10 information to Teva's belief informed</p> <p>11 by legal counsel. But to extent you</p> <p>12 can answer based on non-privileged</p> <p>13 information, you can do so.</p> <p>14 MR. ADAM: Object to the form.</p> <p>15 THE WITNESS: As required by the</p> <p>16 regulations, it does reflect Teva is</p> <p>17 informing Forest of why it -- of its</p> <p>18 reasons behind its position that it</p> <p>19 doesn't infringe the patent, yes.</p> <p>20 BY MR. LUKENS:</p> <p>21 Q. Similarly, it's letting Forest</p> <p>22 know Teva's position with respect to the</p> <p>23 reasons why the patent is challenged as being</p> <p>24 invalid. Is that right?</p> <p>25 A. That's right.</p>	<p style="text-align: right;">Page 49</p> <p>1 extent it calls for any privileged</p> <p>2 information. But to the extent that</p> <p>3 you know any non-privileged</p> <p>4 information, you can do so.</p> <p>5 THE WITNESS: I thought this was</p> <p>6 a brand product that had new chemical</p> <p>7 entity exclusivity, which means there's</p> <p>8 a date on which that's the earliest</p> <p>9 date that any company can file a</p> <p>10 Paragraph IV Cert -- an ANDA with a</p> <p>11 Paragraph IV Certification. I believe</p> <p>12 Namenda IR was one of those products.</p> <p>13 So if we were filing on that date, we</p> <p>14 would have anticipated that we would be</p> <p>15 a first filer. Of course, that means</p> <p>16 the ANDA is accepted by the FDA and all</p> <p>17 of that as well.</p> <p>18 BY MR. LUKENS:</p> <p>19 Q. At some point after that, Teva</p> <p>20 learned that there were other entities that</p> <p>21 believed that they would have first to file</p> <p>22 status because they filed on the same day?</p> <p>23 A. We would have seen that other</p> <p>24 companies are sued. We were sued along with a</p> <p>25 bunch of other -- we would assume that they</p>

13 (Pages 46 - 49)

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<p style="text-align: right;">Page 86</p> <p>1 this point in time, that these are the</p> <p>2 best terms. They could change. You</p> <p>3 could get even better terms. But,</p> <p>4 yeah, you're assuming that you're</p> <p>5 getting the best date.</p> <p>6 BY MR. LUKENS:</p> <p>7 Q. And if they change for some</p> <p>8 other generic, the expectation with MFN is</p> <p>9 that they're going to change for Teva?</p> <p>10 A. Correct.</p> <p>11 Q. If they're better?</p> <p>12 A. Yes, correct.</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 88</p> <p>1 And I ask you if you recognize this as an</p> <p>2 e-mail that was sent to David Stark from Eric</p> <p>3 Agovino on July 15, 2009?</p> <p>4 A. Yes.</p> <p>5 Q. And do you see that Mr. Agovino</p> <p>6 is the intellectual property litigation</p> <p>7 counsel for Forest Laboratories?</p> <p>8 A. That's what it says.</p> <p>9 Q. The subject is amended</p> <p>10 litigation and it appears to have an</p> <p>11 attachment, Teva settlement proposal. Do you</p> <p>12 see that?</p> <p>13 A. Yes.</p> <p>14 Q. If you could take a -- just a --</p> <p>15 I don't -- you're not -- I'm not going to ask</p> <p>16 you too much details about the specifics. If</p> <p>17 you could take a look at the attachment.</p> <p>18 A. Okay.</p> <p>19 Q. Do you have any understanding of</p> <p>20 whether this is the term sheet that you may</p> <p>21 have been talking about earlier or is this</p> <p>22 further along, do you think?</p> <p>23 A. I thought the term sheet said</p> <p>24 term sheet on it. I don't remember, but I</p> <p>25 thought it said term sheet on it. So I'm not</p>
<p style="text-align: right;">Page 87</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 MR. LUKENS: I want to mark the</p> <p>16 next exhibit, which is Number 20.</p> <p>17 - - -</p> <p>18 (Exhibit Teva-20, 7/15/09 E-mail</p> <p>19 with attachment, 03633179 - 03633187,</p> <p>20 was marked for identification.)</p> <p>21 - - -</p> <p>22 BY MR. LUKENS:</p> <p>23 Q. I've handed you what we've had</p> <p>24 marked as Teva Exhibit 20. It's a Forest</p> <p>25 document that begins Bates RFX-AT-03633179.</p>	<p style="text-align: right;">Page 89</p> <p>1 sure.</p> <p>2 Q. So a term sheet is going to be</p> <p>3 sent in advance of a draft settlement</p> <p>4 agreement. Is that right?</p> <p>5 A. It can be, yeah. And I think in</p> <p>6 this situation, that's my understanding, there</p> <p>7 was a term sheet sent ahead of time.</p> <p>8 Q. And so this e-mail from</p> <p>9 Mr. Agovino in the second sentence says it's a</p> <p>10 draft settlement proposal for the Namenda</p> <p>11 case. And he says it's subject to comments by</p> <p>12 Forest and Merz management. And asks</p> <p>13 Mr. Stark to review. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So attached is the draft</p> <p>16 settlement agreement. And I'm not going to</p> <p>17 ask you about much of this, but if you take a</p> <p>18 look at paragraph 3, clause 3, it's on page 2</p> <p>19 of the draft, and it says, "Launch Date." Do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And in the middle of that</p> <p>23 paragraph, I guess it's the second sentence</p> <p>24 in, it says, Plaintiffs hereby permit Teva to</p> <p>25 commence commercial sale or distribution of</p>

23 (Pages 86 - 89)